

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant | : Vincent P. Walker et al. | Art Unit | : 3725 |
| Serial No. | : 10/799,946 | Examiner | : Sean M. Michalski |
| Filed | : March 11, 2004 | Conf. No. | : 8017 |
| Title | : SHAVING RAZORS AND SHAVING CARTRIDGES | | |

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

A Notice of Appeal from the rejection of the pending application was filed and received at the U.S. Patent and Trademark Office on October 11, 2007.

(1) Real Party in Interest

The real party in interest is The Gillette Company, Prudential Tower Building, Boston, Massachusetts. The Gillette Company recently was acquired by The Procter & Gamble Company.

(2) Related Appeals and Interferences

There are no related appeals or interferences.

(3) Status of Claims

Claims 1-24, 28-30, 35-43 and 81-91 are pending. Claims 25-27, 31-34, and 44-80 have been canceled. Claims 1-24, 28-30, 35-43 and 81-91 stand rejected and are appealed herein.

Claims 1, 2, 4, 6, 9, 10, 11, 15, and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown et al., U.S. Patent No. 6,185,823 ("Brown") in view of Rozenkranc, U.S. Patent No. 6,276,061 ("Rozenkranc"). Claims 3, 5, 7, 8, and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Rozenkranc in further view of Anderson et al., U.S. Patent No. 5,761,814 ("Anderson"). Claims 13, 14, 16-21, 30, 33-43, 85, and 87-91 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Rozenkranc in further view of Parmley, R.O. Illustrated Sourcebook of Mechanical Components, ("Parmley"). Claims 22, 23, and 24 stand rejected under 35 U.S.C. §103(a) as being

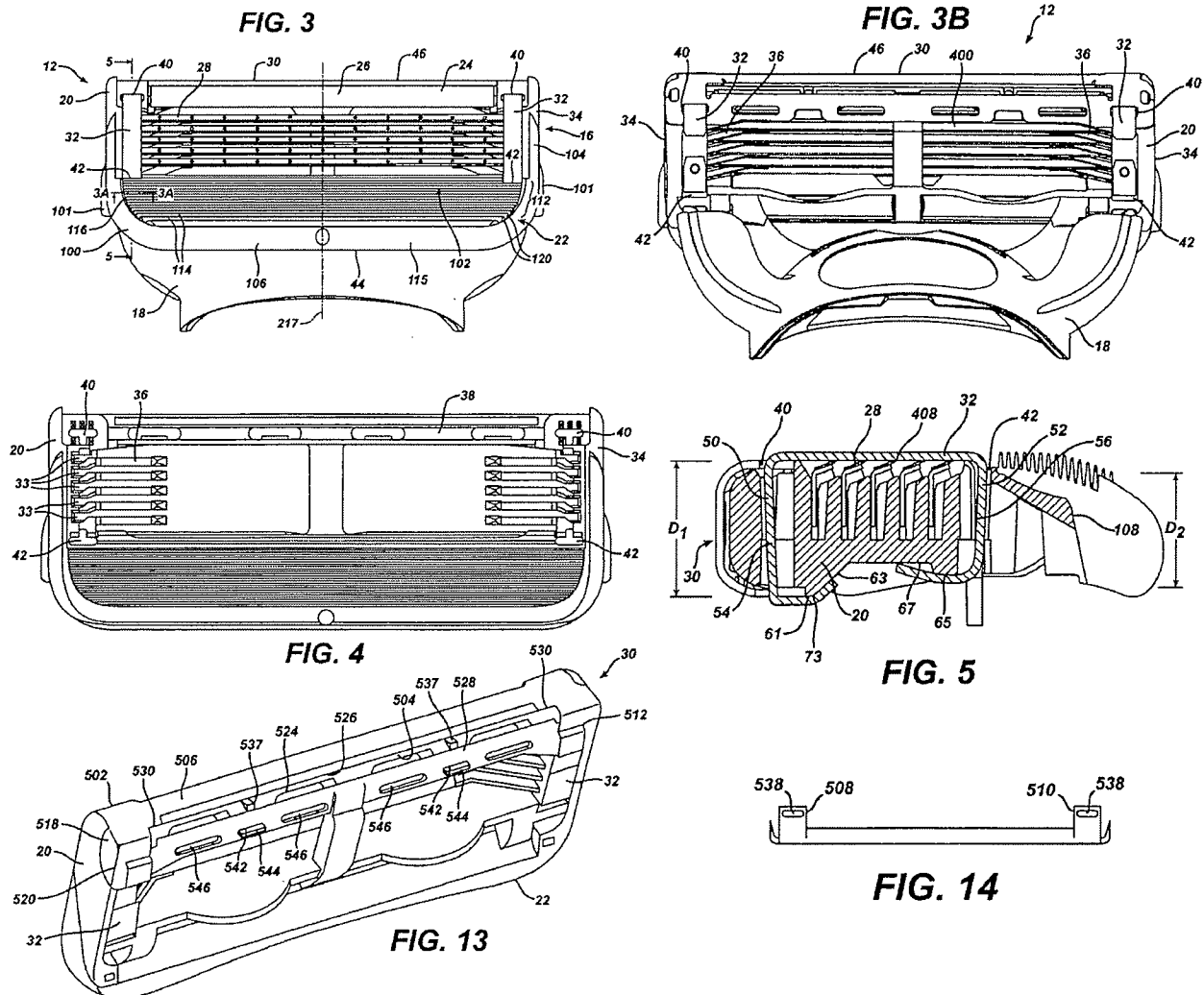
unpatentable over Brown in view of Rozenkranc, Anderson, and Parmley, and further in view of Rozenkranc.

(4) Status of Amendments

All amendments have been entered.

(5) Summary of Claimed Subject Matter

The claims relate to a shaving blade unit having clips for retaining shaving blades (see e.g., specification, page 1, lines 2-3). Claims 1, 30, and 90 are in independent form. Examples of the claim features are shown in figures 3, 3B, 4, 5, 13, and 14, reproduced below.



Each of the claims require a shaving blade unit (e.g., 16) that includes one or more shaving blades (e.g., 28) defining a first cutting region and a separate trimming assembly (e.g., 30). The claims require the use of a clip (e.g., 32) to secure both the "one or more of the blades" (e.g., 28) of the cutting region and the trimming assembly (e.g., 30) to the shaving blade unit.

As set forth in claim 1, the shaving blade unit (e.g., 16) includes a housing (e.g., 20) having a front edge, a rear edge and side edges extending between the front and rear edges. (See e.g., specification, paragraph 71). The housing (e.g., 20) defines an aperture (e.g., 40) between the front and rear edges. (See e.g., specification, paragraph 71 and Fig. 4). One or more shaving blades (e.g., 28) are positioned between the front edge and the rear edge. (See e.g., Fig. 3). The one or more blades (e.g., 28) have cutting edges arranged to define a cutting region. (See e.g., specification, paragraph 10; Fig. 3). The shaving blade unit (e.g., 16) further includes a clip (e.g., 32) arranged to retain the one or more shaving blades (e.g., 28) on the housing. (See e.g., specification, paragraph 74; Fig. 5). The clip (e.g., 32) has a leg (e.g., 50) received by the aperture (e.g., 40). (See e.g., Figs. 3 and 5). The leg (e.g., 50) has a bent portion defining a curvature to secure the clip to the housing. (See e.g., specification, paragraph 73).

The trimming blade assembly (e.g., 30) includes a blade carrier (e.g., 502) and a trimming blade (e.g., 504). (See e.g., specification, paragraph 83; Fig. 13). The trimming blade assembly (e.g., 30) is also retained on the housing by the clip (e.g., 32). The leg of the clip (e.g., 50) extends through an opening (e.g., 538) defined by the trimming blade assembly to securing the trimming blade assembly (e.g., 30) to the housing (e.g., 20) relative to the shaving blades (e.g., 28). (See e.g., specification, paragraphs 87 and 90; Figs. 13 and 14). When the trimming blade (e.g., 504) is in contact with a user's skin, the cutting edges of the one or more shaving blades (e.g., 28) are disposed on a surface facing away from a surface contacting the user's skin. (See e.g., Figs. 3 and 13).

Furthermore, dependent claim 2, which depends from claim 1, requires that the aperture (e.g., 40) extend from a top surface of the housing (e.g., 20), adjacent the cutting edges of the blades (e.g., 28), to a bottom, opposite, surface of the housing (e.g., 20), as shown in Fig. 5, above.

As set forth in claim 30, the shaving blade unit (e.g., 16) includes a housing (e.g., 20) having a front edge, a rear edge and side edges extending between the front and rear edges. (See

e.g., specification, paragraph 71). The housing (e.g., 20) defines a pair of apertures (e.g., 40 and 42). (See e.g., specification, paragraph 71). One or more shaving blades (e.g., 28) are positioned between the front edge and the rear edge. (See e.g., Fig. 3). The one or more blades (e.g., 28) having cutting edges arranged to define a cutting region. (See e.g., specification, paragraph 10; Fig. 3). The shaving blade unit (e.g., 16) further includes a clip (e.g., 32) having a pair of legs (e.g., 50 and 52) arranged so that each leg (e.g., 50 and 52) extends through one of the apertures (e.g., 40 and 42) to retain the one or more shaving blades (e.g., 28) on the housing (e.g., 20). The legs (e.g., 50 and 52) each have differing curvatures. (See e.g., specification, paragraph 75; Fig. 5). The shaving blade unit (e.g., 16) also includes a trimming blade assembly (e.g., 30) that includes a blade carrier (e.g., 502) and a trimming blade (e.g., 504). (See e.g., specification, paragraph 83; Fig. 13). The trimming blade assembly (e.g., 30) is retained on the housing by the clip (e.g., 32). A leg of the clip (e.g., 50) extends through an opening (e.g., 538) in the trimming blade assembly (e.g., 30) to secure the trimming blade assembly (e.g., 30) to the housing (e.g., 20). (See e.g., specification, paragraphs 87 and 90; Figs. 13 and 14). When the trimming blade (e.g., 504) is in contact with a user's skin, the cutting edges of the one or more shaving blades (e.g., 28) are disposed on a surface facing away from a surface contacting the user's skin. (See e.g., Figs. 3 and 13).

Furthermore, dependent claim 39, which depends from independent claim 30, via dependent claims 37 and 38, requires that the curvatures of the clip legs are defined by multiple bent portions and that the clip legs each have a straight portion that extends through the housing. (See e.g., Fig. 5).

As set forth in claim 90, the shaving blade unit (e.g., 16) includes a housing (e.g., 20) having a front edge, a rear edge and side edges extending between the front and rear edges. (See e.g., specification, paragraph 71). The housing (e.g., 20) defines two pairs of apertures (e.g., 40 and 42) between the front and rear edges. (See e.g., specification, paragraph 71; Fig. 3). Each of the apertures (e.g., 40 and 42) extends from a top surface of the housing (e.g., 20), adjacent the cutting edges of the blades (e.g., 28), to a bottom, opposite, surface of the housing (e.g., 20). (See e.g., specification, paragraph 71; Fig. 3). One or more shaving blades (e.g., 28) are positioned between the front edge and the rear edge. (See e.g., Fig. 3). The one or more blades (e.g., 28) have cutting edges arranged to define a cutting region. (See e.g., specification,

paragraph 10; Fig. 3). The shaving blade unit (e.g., 16) also includes a trimming blade assembly (e.g., 30) that includes a blade carrier (e.g., 502) and a trimming blade (e.g., 504). (See e.g., specification, paragraph 83; Fig. 13). The trimming blade assembly further includes a slot (e.g., 538). (See e.g., specification, paragraphs 87 and 90; Figs. 13 and 14). The shaving blade unit (e.g., 16) further includes a pair of clips (e.g., 32), disposed on opposite sides of the cutting region, each clip having a pair of legs (e.g., 50 and 52), each leg extending through one of the apertures (e.g., 40 and 42) and one leg of each clip extending through the slot, to retain the one or more shaving blades (e.g., 28) and the trimming blade assembly (e.g., 30) on the housing (e.g., 20). (See e.g., specification, paragraphs 87 and 90; Figs. 13 and 14).

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1, 2, 4, 6, 9, 10, 11, 15, and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown et al., U.S. Patent No. 6,185,823 ("Brown") in view of Rozenkranc, U.S. Patent No. 6,276,061 ("Rozenkranc"). Claims 3, 5, 7, 8, and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Rozenkranc in further view of Anderson et al., U.S. Patent No. 5,761,814 ("Anderson"). Claims 13, 14, 16-21, 30, 33-43, 85, and 87-91 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Rozenkranc in further view of Parmley, R.O. Illustrated Sourcebook of Mechanical Components, ("Parmley"). Claims 22, 23, and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Rozenkranc, Anderson, and Parmley, and further in view of Rozenkranc. Appellant requests reversal of all of the above noted rejections under 35 U.S.C. § 103(a).

(7) Argument

Appellant will explain why each of the currently pending rejections should be reversed.

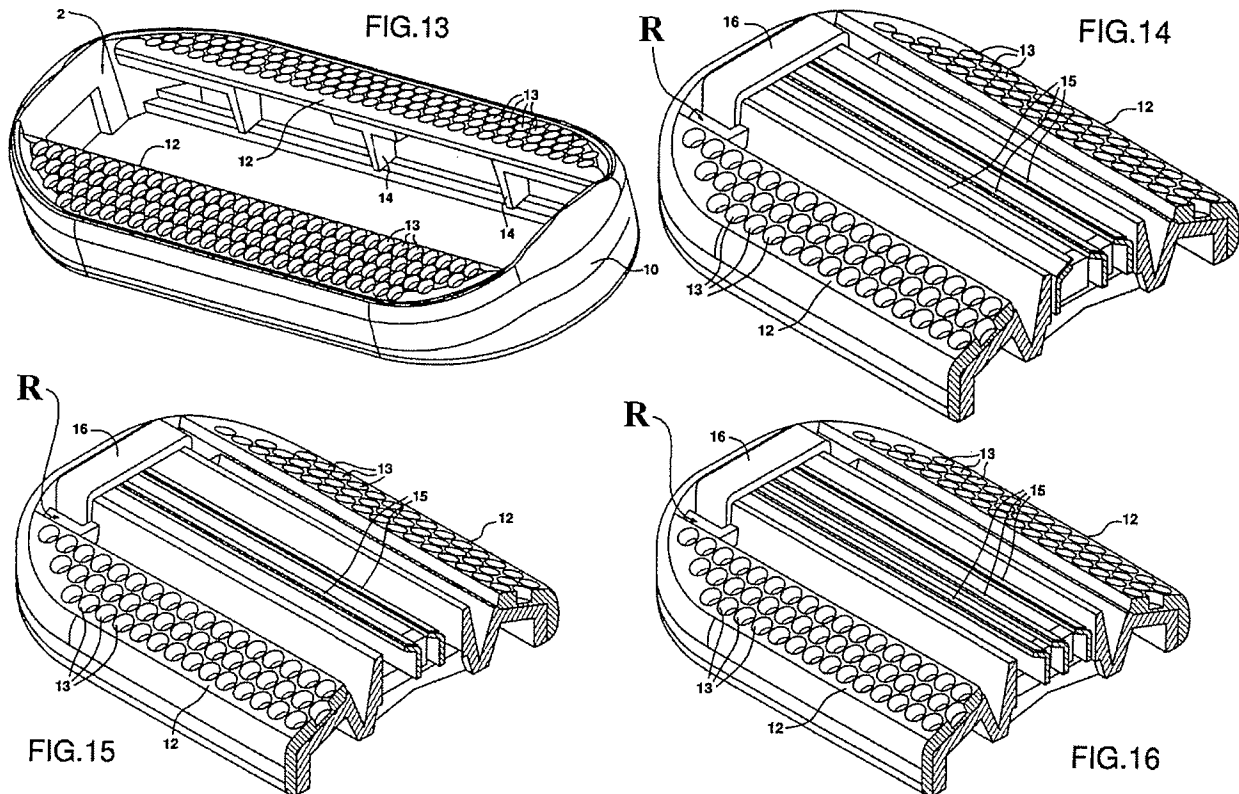
A. Claims 1, 2, 4, 6, 9, 10, 11, 15, and 28 Are Patentable Over Brown In View Of Rozenkranc Under 35 U.S.C. § 103(a)

Claims 1, 2, 4, 6, 9, 10, 11, 15, and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Rozenkranc. This rejection is improper because Brown and Rozenkranc, even in combination, do not disclose every claimed feature of the claimed shaving

blade unit. Furthermore, one having ordinary skill in the art at the time of invention, even if seeking to combine the features of the Brown and Rozenkranc devices, would not have arrived at the claimed shaving blade unit. Accordingly, the rejection is improper and should be withdrawn.

Appellant will first discuss the Brown razor, and then address in turn the Examiner's contentions regarding Brown.

Brown discloses various blade units and blade unit housings or "frames." Brown's finished razor cartridge consists of an assembly of a blade unit housing with a blade unit. The blade unit housings are shown separate from the blade unit in Figures 1-9, 13, and 17. As shown in Fig. 13, reproduced below, the blade unit housing includes a large rectangular aperture 2, the function of which is to hold the blade unit, which includes the blades 15. The assembled razor cartridge, including both the blade unit housing and the blade unit, disposed in aperture 2, is shown in Figs. 14-16, also reproduced below. Referring to the sectioned portion of Figs. 14-16, the blade unit is the lower structure, shown with cross-hatching that slants to the right, while the blade unit housing is the upper unit, shown with cross-hatching that slants to the left.



In the completed razor cartridges, blades 15 are held in place by a security clip 16 as shown in Figs. 14-16. These are the only figures that show the completed razor cartridge, and thus the only figures that show the security clip 16 or give any hint as to how it is retained on the cartridge. There is no indication in the specification as to how the clip is retained. However, looking at Figs 14-16 it appears that the clip is retained by engagement of its downwardly extending legs with some type of retaining structure R (our designation) within a V-shaped groove of the blade unit. There is nothing to indicate that this retaining structure is an aperture. Instead, because it is not shown as extending around the clip, but appears to be L-shaped, the artisan would not believe this structure to be an aperture. Nor is there anything in Brown to indicate that the clip extends through the bottom of the V-shaped groove of the blade unit.

The securing clips 16 secure only the blades 15, which are in a single cutting plane. There is neither any teaching nor suggestion in Brown that the clips 16 could be used to secure anything else to the razor cartridge. In the embodiment shown in Fig. 14, two of the blades face in one direction (forward) and a third blade faces in the opposite direction (rearward). Brown states that because of this "the razor will shave in both directions" (col. 4, lines 35-39). There is nothing to indicate that the rearward facing blade is intended as a trimming blade, nor that it would inherently function that way. Instead, Brown repeatedly states that the razor is particularly advantageous as a female razor, for shaving the axillae (armpits) and legs.

The Examiner makes a number of assertions regarding Brown with which Appellant disagrees.

For example, at page 4 of the Office Action mailed September 4, 2007, the Examiner contends that in Brown the clip has "a leg received by the aperture...the leg having a curvature ... to secure the clip to the housing." Appellant disagrees with this statement on two grounds. First, referring to Figs. 14-16, the leg is not received by an aperture (opening) defined by the housing. The L-shaped structure combined with the V-shaped groove of the blade unit cannot be construed to be an "aperture," based on the ordinary and customary meaning given to that term by those of ordinary skill in the art. An "aperture" is generally defined as a narrow opening such as a hole, gap, or slit. Appellant respectfully submits that the L-shaped structure does not define an opening. Second, although the Examiner is correct that clip 16 has a bent portion, which is

curved, as shown on page 15 of the Office Action, this bend defines the leg of clip 16. The legs of clip 16, however, are not themselves bent to define "a curvature to secure the clip to the housing," as required by independent claim 1. Instead, the legs of clip 16 merely extend straight into retaining structures R. Accordingly, the rejection is in error.

On the same page, the Examiner further alleges that Brown "discloses a trimming blade assembly," citing blades 15 of Fig. 15. Appellant emphatically disagrees. Brown does not disclose a trimming blade assembly as recited in Appellant's claims. There is nothing to indicate that Brown even discloses a trimming *blade*.

If the Examiner is alleging that all of the blades 15 of any of Figs. 14-16 are part of the trimming blade assembly, then the razor cartridge fails to have a separate cutting region defined by the "one or more shaving blades between the front edge and the rear edge" of the housing. Because it would be improper for the Office Action to double count a single element of the Brown razors to constitute multiple claim elements when the claims make it clear that these are separate elements, this interpretation of the Brown razor cartridge is improper.

The interpretation of the Brown razor cartridge is also improper if the Examiner is interpreting just a single blade 15 of one of the Brown razor cartridges as being the trimming blade assembly, because this single blade would still be one of the one or more shaving blades between the front edge and the rear edge of the housing having cutting edges arranged to define a cutting region. Because the claims distinguish the "trimming blade assembly" from the "one or more blades" of the "cutting region," it is improper for the Examiner to construe one of these blades 15 to also be the trimming blade assembly.

Appellant also notes that Fig. 14, not Fig. 15, of Brown depicts one rearward facing blade 15. In previous Office Actions, the Examiner has interpreted this structure to be a trimming blade. (See e.g., the Office Action mailed December 20, 2006, page 3) Again, this rearward facing blade 15 of Brown still constitutes one of the one or more shaving blades between the front edge and the rear edge of the housing having cutting edges arranged to define a cutting region. Because the rearward facing blade 15 meets the requirements of the blades of the "cutting region" it cannot properly also be construed to be the separate trimming blade assembly, when independent claim 1 requires that "when the trimming blade is in contact with a user's skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a

surface contacting the user's skin." The rearward facing blade is provided solely so that the razor will "shave in both directions." (See Brown, col. 4, lines 35-39).

Assuming *arguendo* that one of the blades 15, such as the rearward facing blade 15 shown in Fig. 14, could be construed as a trimming blade (which is not conceded), Brown nonetheless does not disclose or suggest the claimed trimming blade assembly. Appellant's trimming blade assembly includes, among other things, an opening through which a leg of the clip extends to secure the trimming blade assembly to the housing. Clearly none of the individual blades 15 of Brown, including the rearwardly facing blade, includes such an opening, and thus none of these individual blades reads on Appellant's trimming blade assembly.

The Examiner, however, does contend that "the leg of the clip extends through an opening defined by the trimming blade assembly (this is seen in Fig. 15, the leg depending into an aperture defined by the outside perimeter of the trimming blade assembly)." (Office Action, pages 4-5). Appellant emphatically disagrees with this statement. The Examiner is apparently again referring to the retaining structure R, as discussed above. The Examiner has already interpreted this structure to be the aperture defined by the housing. The retaining structure R cannot serve double duty as both an aperture defined by the housing and as an opening defined by the trimming blade assembly. Any such interpretation of the Brown device essentially equates the housing with the trimming blade assembly, ignoring the claim language that clearly defines these as separate structures. Independent claim 1 recites that "the leg of the clip extends through an opening defined by the trimming blade assembly *securing the trimming blade assembly to the housing* relative to the shaving blades, such that when the trimming blade is in contact with a user's skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the user's skin." (emphasis added). If this structure is both a part of the housing and a part of the trimming blade assembly, then this arrangement cannot possibly secure the trimming blade assembly to the housing. Nor does the Examiner contend that Rozenkranc discloses any of features (a)-(d). Accordingly, it is improper to interpret the retaining structure R to be the opening defined by the trimming blade assembly, while also interpreting it to be the aperture defined by the housing. Accordingly, the Examiner's interpretation of the Brown razor cartridge is improper.

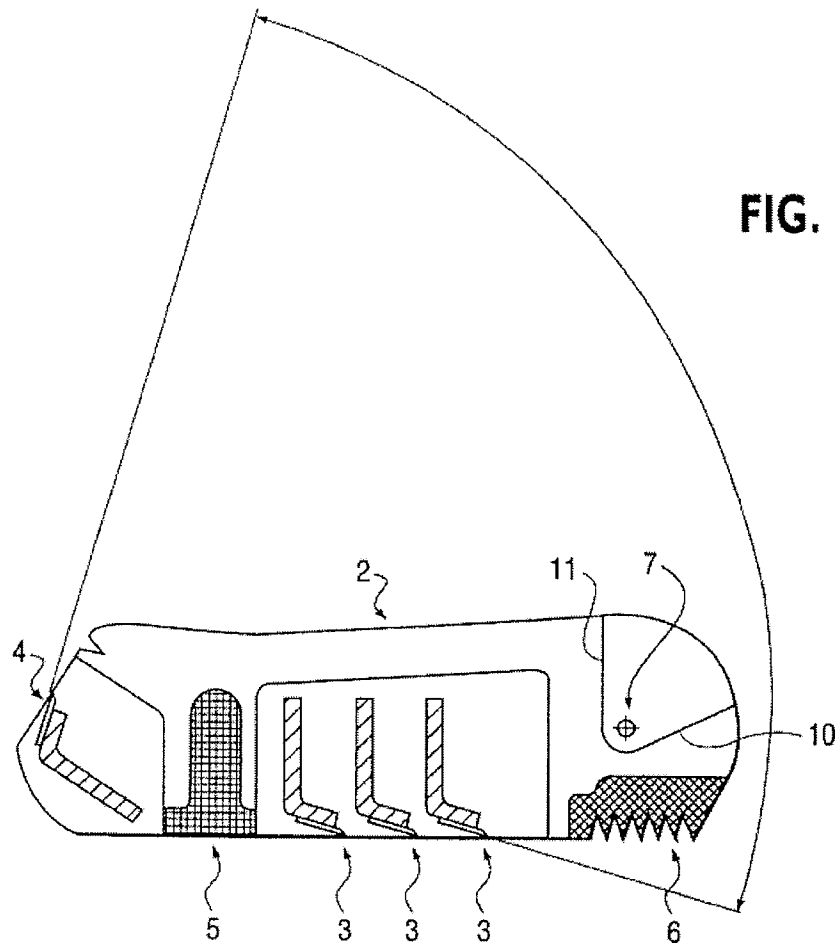
Moreover, as acknowledged by the Examiner at page 5 of the Office Action, Brown does not disclose a trimming blade assembly positioned so that the when the trimming blade is in contact with a user's skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the user's skin.

Accordingly, Brown does not disclose a number of features of Appellant's independent claims, including (a) an aperture into which a leg of the clip is received, (b) a clip having a "leg having a bent portion defining a curvature to secure the clip to the housing," (c) a trimming blade assembly, (d) a clip extending through an opening defined by a trimming blade assembly, and (e) a trimming blade assembly positioned so that the when the trimming blade is in contact with a user's skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the user's skin.

Rozenkranc also does not disclose all of these features. Rozenkranc does not even disclose a clip, so it is impossible for Rozenkranc to disclose a clip having a leg having a bent portion defining a curvature to secure the clip to the housing, an aperture in which a leg of a clip is retained, or a clip that extends through an opening defined by a trimming blade assembly. Moreover, while Rozenkranc discloses a trimming blade, Rozenkranc does not disclose the claimed trimming blade assembly, which, as discussed above, defines an opening, through which a leg of the clip extends to secure the trimming blade assembly to the housing relative to the shaving blades. The Examiner, however, takes the position that Brown discloses all of the claimed elements, arguing that Rozenkranc provides a motivation to rearrange the elements to arrive at Appellant's claimed device. Because this position is factually incorrect, the rejection is in error and must be withdrawn.

The rejection is also improper because one having ordinary skill in the art, even if seeking to modify the razor disclosed by Brown, would not have combined the features of Brown and Rozenkranc as proposed to arrive at the claimed invention. Rozenkranc does disclose a multi-blade shaving apparatus having both shaving blades 3, which define a cutting surface, and a trim blade 4, as depicted in Fig. 1 of Rozenkranc, reproduced below. Rozenkranc, however, does not disclose any clip at all. If one having ordinary skill was seeking to add the trim blade 4 of Rozenkranc to the blade unit of Brown, the Examiner has not supplied a credible reason why

this hypothetical person would have attached it in a way that arrives at the claimed invention.
Appellant will address below the reasons advanced by the Examiner in the Office Action.



The Examiner, asserts that “[s]ince the trimming blade of Brown is retained by clip, it follows that the clip would still be used to retain the trimming blade when it is reoriented.” (Office Action, page 5, line 21 – page 6, line 1). Because it is false that Brown discloses a separate trimming blade assembly, as defined by the claims, the Examiner’s alleged reason why one having ordinary skill in the art would have used the same clip fails to present a *prima facie* case of obviousness. It does not follow that one having ordinary skill in the art, if seeking to add the trim blade 4 of Rozenkranc to the blade unit of Brown, would seek to drastically alter the clip structure of clip 16 of Brown to connect both a trimming blade assembly to the housing and to

retain the blades defining the cutting surface when these regions are separate structures facing different directions, as required by claim 1. To do so would require a wholesale redesign of the Brown device. Not only would it be necessary to extend the leg of the clip through the blade unit, it would also be necessary to provide an opening in the Rozenkranc trimming blade, thread the leg of the clip through that opening -- repositioning the Rozenkranc trim blade so that this can be accomplished -- and define a curvature in the leg that secures the clip to the housing. A "suggested combination of references [that] require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate" does not establish a *prima facie* case of obviousness. (*In re Ratti*, 270 F.2d at 813, see also MPEP 2143.02(VI)). Because the Examiner's argument would require a drastic redesign of clip 16 of Brown in order to not only retain the blades 15, but to also pass through an aperture of a separate trimming blade assembly to secure the trimming blade assembly to the housing, the rejection is improper and should be withdrawn.

The rejection is also improper because one having ordinary skill in the art would not be motivated to rearrange the features of Brown based on the disclosure of Rozenkranc. The Examiner alleges that one or more of the blades 15 of Brown constitute a trimming blade and then asserts that one having ordinary skill in the art would have repositioned that blade, or those blades, based on the disclosure of Rozenkranc. The Examiner's position is incorrect, however, because one having ordinary skill in the art would not recognize any functional similarity between any of the blades 15 of Brown and the trim blade 4 of Rozenkranc. Rozenkranc discloses the use of the trim blade 4 to allow for a good trim of sideburn hair or hair near a nostril. (See Rozenkranc, col. 1, lines 14-15 & 53-61). Brown does not disclose such a function for any of the blades 15 in any embodiment of the Brown razor cartridge, including the rearward facing blade 15 shown in Fig. 14. Brown makes no mention of shaving sideburn hair or hair near a nostril. Brown repeatedly states that the razor is particularly advantageous as a female razor, for shaving the axillae (armpits) and legs. Regarding the rearward facing blade 15 of Fig. 14, Brown states that this allows the razor to "shave in both directions" (Brown, col. 4, lines 35-39). Because there is nothing to indicate that any blade 15 of Brown is intended to have a similar function to that of the trim blade 4 disclosed by Rozenkranc, one having ordinary skill in the art

would not take the disclosure of Rozenkranc to have any relevance regarding the blades 15 of Brown. Furthermore, one having ordinary skill in the art would not find the asserted rearrangement of the blades 15 of Brown to be a desired configuration, given that the Brown razor cartridge is intended for use on legs and armpits, rather than on a face. Accordingly, the rejection is improper.

Nor does the case law cited by the Examiner support the Examiner's position. The Examiner cites to *In re Rose*, 105 USPQ 237 (CCPA 1955) and *In re Yount*, 171 F.2d 317 (CCPA 1949), for the proposition that "rearranging the parts of an invention involves only routine skill in the art." However, the Examiner's rejection alleges more than a mere rearrangement of the parts of the Brown razor. It requires a wholesale redesign of the device and also requires the addition of elements not found in either Brown or Rozenkranc, as discussed above. Additionally, the Examiner's alleged rearrangement of parts substantially changes the function of the blades 15 of Brown to have the different function disclosed by Rozenkranc. Accordingly, the Examiner's citation to these cases is irrelevant.

The Examiner also cites to *Sakraida v. Ag. Pro., Inc.*, 425 U.S. 273 (1976), *Anderson's Black Rock, Inc. v. Pavement Salvage Co., Inc.*, 396 U.S. 57 (1969), and *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) for the proposition "that the combination of elements known in the prior art to be used in accordance with their known function *is unpatentable as a matter of law* absent a showing that the combination has results with are unexpectedly advantageous over the prior art." This proposition is also irrelevant. As discussed above, Brown and Rozenkranc fail to disclose all of the claimed elements and rejection alleges that one having ordinary skill in the art would combine the references in a way that alters the function of the elements (e.g., the security clip 16 is modified from merely retaining the blades 15 to also securing a trimming blade assembly to the housing). Contrary to the Examiner's assertion, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) does not require for a combination "to provide some synergistic effect" to be patentable. (See Office Action, page 7, lines 3-9). Furthermore, the Examiner has overstated the law when asserting that "[u]sing known elements for their known functions is *as a matter of law not patentable*, since it removes resources available to skillful men, contrary to the U.S. Const., Art. I §8, cl.8, which provides patent monopolies to promote the progress of useful arts. See Slip op. *KSR* at 24 lines 5-7." (Office Action, page 7, lines 6-9 (emphasis in original)).

In fact, the cited portion of *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) merely discusses the reasons for disallowing patents "claiming obvious subject matter."

The Examiner also overstates the holding in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) when stating that "[t]he fact that a single clip retains two sets of blades is not inventive and falls under the category of '**ordinary creativity**'". (Office Action, page 7, lines 16-19). The cited portion of *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) merely states that, "A person of ordinary skill is also a person of ordinary creativity, not an automaton." The Examiner, however, has misused this statement in an apparent attempt to create a new basis for rejection under 35 U.S.C. § 103(a). However, *KSR* has not changed the fact that, in order to satisfy the requirements of 35 U.S.C. 103(a), the Examiner must show a reason why one having ordinary skill in the relevant art would have found it obvious to alter the cited prior art to arrive at a combination covered by the claims. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Because, as discussed above, the references in Brown and Rozenkranc do not disclose all of the claimed features and because one having ordinary skill in the art, and thus having ordinary creativity, would not have combined the claimed features in the way alleged by the Examiner, the rejection is improper and should be withdrawn.

Additionally, the Examiner refers to Magrab, "Integrated Product and Process Design and Development" ("Magrab") to provide "a clear reason to use the same clip to retain both the primary and trimming blades." Magrab is a general reference used in undergraduate mechanical engineering courses. The Examiner characterized the Magrab general reference as follows:

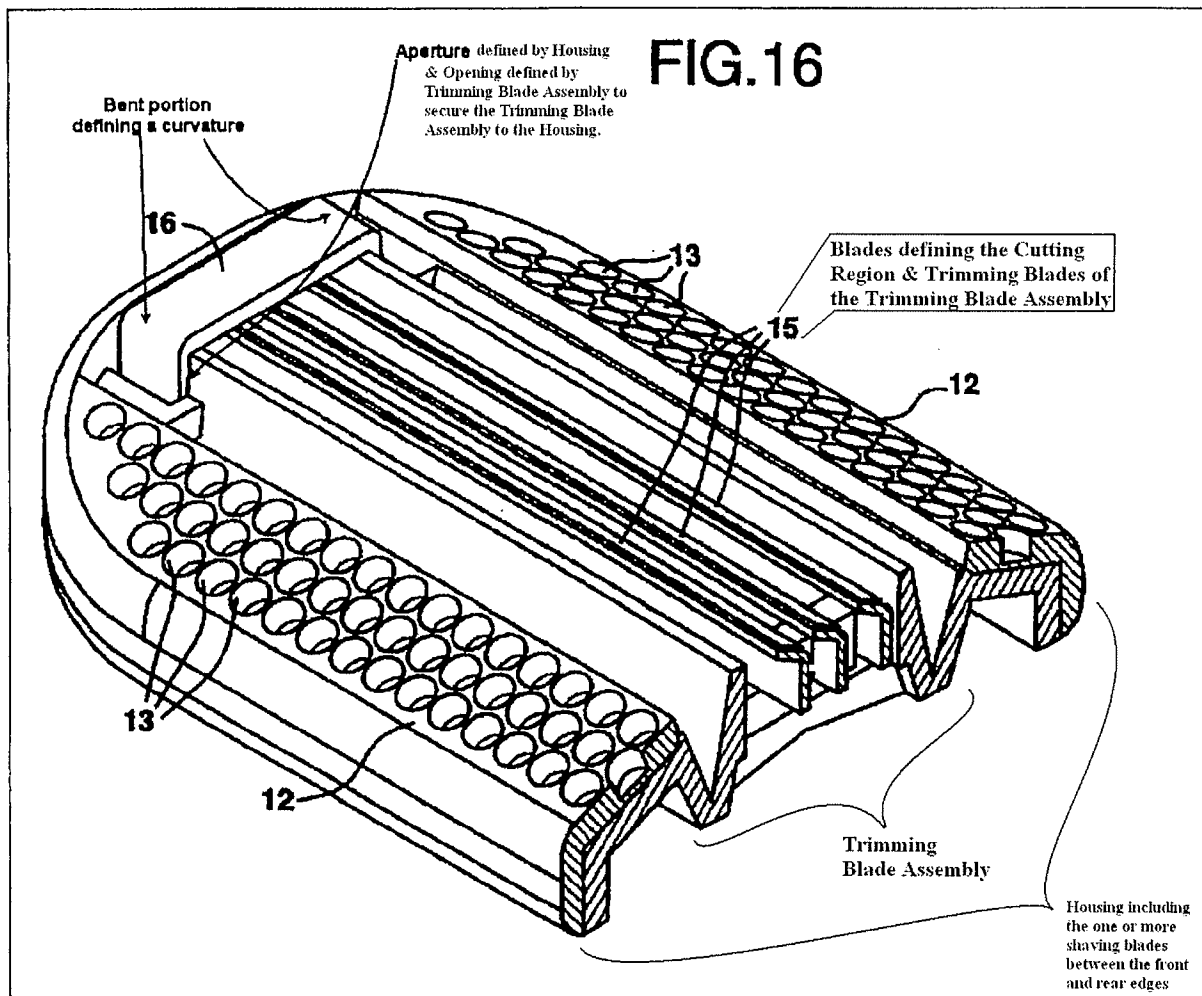
It states, "The basic idea in the design for assembly is to first reduce the number of components (parts, pieces)", and "The principles governing the design for assembly are as follows: 1. Simplify, integrate and reduce the number of parts, because for each part there is an opportunity for a defective part and an assembly error. Fewer parts means less of everything that is needed to manufacture a product." (underlining is original)

(Office Action, page 8, lines 2-7).

At best, Magrab can only be described as a general invitation to conduct a wholesale redesign of any product. A “suggested combination of references [that] require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate” does not establish a prima facie case of obviousness. (*In re Ratti*, 270 F.2d at 813, see also MPEP 2143.02(VI)). Furthermore, redesigning the Brown razor to use a single clip to attach both the blades of the cutting surface and a trimming blade assembly in the manner recited in Appellant's claims would involve significant alterations to the structure and manner of assembly of the Brown razor. There is no suggestion in the art of record as to how this redesign would be accomplished, or even any indication that Magrab's general directive, when applied to Brown, would lead to such a redesign. Instead, it was *Appellant* who invented the claimed design, which as a whole allows a single clip to be advantageously used in this manner.

Accordingly, the rejection of independent claim 1 is in error because Brown and Rozenkranc, even in combination, do not disclose every feature of the claimed shaving blade unit and because one having ordinary skill in the art at the time of invention, even if seeking to combine the features of the Brown and Rozenkranc devices, would not have arrived at the claimed shaving blade unit.

In summary, the Examiner incorrectly alleges that Brown discloses all of the claimed elements, except for the relative positioning of the blades. Below, Appellants have reproduced the Examiner's own diagram (Office Action mailed September 4, 2007, page 26), with additional notations made by the Appellant. As shown, the Examiner construes the L-shaped structure to be both the aperture in the housing and the opening in the trimming blade assembly, the blades 15 to be both the trimming blades and the blades defining the cutting region, and the combination of blades 15 and the blade unit to be both the trimming blade assembly and the housing and the cutting blades. The Examiner has repeatedly taken the position that elements of the Brown razor cartridge can serve double duty to address multiple claim elements. Appellant disagrees with this practice. The claims distinguish these separately claimed elements. The Examiner is apparently ignoring the claim language that distinguishes these claimed elements. For example, independent claim 1 requires that the leg of the clip secures “*the trimming blade assembly to the housing* relative to the shaving blades.” Additionally, independent claim 1



includes language about the relative positioning of the trimming blade and the one or more shaving blades. Accordingly, the rejection is in error and must be withdrawn.

Furthermore, dependent claim 2 requires the aperture to “extend from a top surface of the housing, adjacent the cutting edges of the blades, to a bottom, opposite, surface of the housing .” Addressing claim 2, the Examiner refers to Fig. 13 of Brown and asserts that aperture 2 is the aperture through which the clips extend, and that it would have been obvious to modify this aperture to have the clip extend through the other side of the housing. The rejection is improper for several reasons. First, from a legal standpoint, the Examiner provides no reason why one having ordinary skill would modify the Brown razor cartridge to have an aperture extend through the bottom of the V-shaped structure and through the bottom surface of the housing.

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements;

instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR Int’l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The rejection of dependent claim 2 is also improper from a factual standpoint because the Examiner is referring to aperture 2, the central aperture into which the blade unit is assembled, yet for rejecting independent claim 1, the Examiner asserts that the L-shaped retaining structure R is the aperture into which the leg of clip 16 extends into. This is inconsistent. Moreover, it is nonsensical, since as discussed above the aperture 2 does not exist in the assembled razor cartridge, since it is completely filled by the blade unit as shown in Figs. 14-16. There is also no suggestion in any of the art of record to form an aperture that extends from a top surface of the housing, adjacent the cutting edges of the blades, to a bottom, opposite, surface of the housing. Accordingly, the rejection is improper and should be withdrawn.

Furthermore, the rejection of dependent claims 2, 4, 6, 9, 10, 11, 15, and 28 is also improper for at least the reasons given above with regard to independent claim 1.

B. Claims 3, 5, 7,8, and 12 Are Patentable Over Brown In View Of Rozenkranc In Further View of Anderson Under 35 U.S.C. § 103(a)

Anderson does not remedy the deficiencies of Brown and Rozenkranc, as discussed above. Anderson discloses a blade unit having a substantially different structure than that disclosed by Brown. The clips 50 and 51 of Anderson do not pass into an aperture of a housing, but rather hold the blade unit assembly together by being formed around the body of the assembly, as shown in Figs. 1, 2, and 5, reproduced below.

The clips 50 and 51 of Anderson are placed around the structure of Anderson. There is no suggestion, however, that the clips 50 and 51 of Anderson could easily be placed into an aperture (even if an aperture were disclosed by Brown, which is not the case), nor into the retaining structure R shown by Brown. Also, the bent legs of Anderson would not be able to pass into the V-shaped groove of Brown. Accordingly, one having ordinary skill in the art would not expect success in merely substituting the clips of Anderson for the clips of Brown. Furthermore, one seeking to get the advantages of the Anderson clip would place the clip around the housing of Brown, rather than into the retaining structure of Brown. Because one having

ordinary skill in the art would not have modified the Brown razor based on the disclosures of Rozenkranc and Anderson to arrive at the claimed shaving unit, the rejection is improper and should be withdrawn. Furthermore, the use of a clip having a structure similar to that of clips 50 and 51 of Anderson with the housing of Brown would require substantial redesign of the Brown housing to allow for the attachment of the Anderson clips. A "suggested combination of references [that] require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate" does not establish a *prima facie* case of obviousness. (*In re Ratti*, 270 F.2d at 813, see also MPEP 2143.02(VI)).

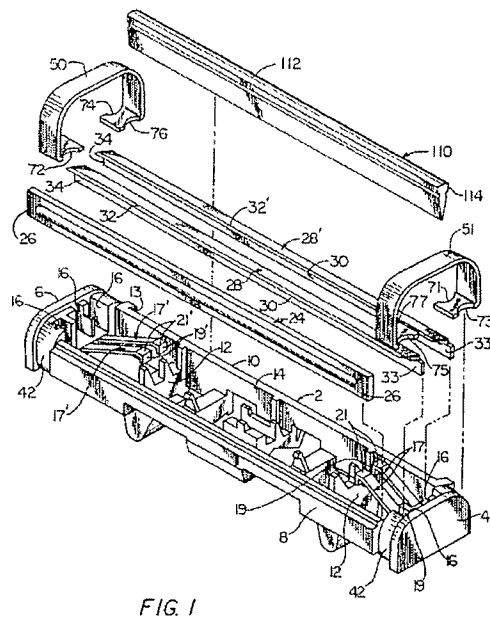


FIG. 1

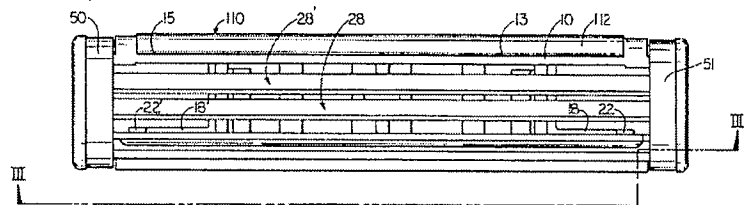


FIG. 2

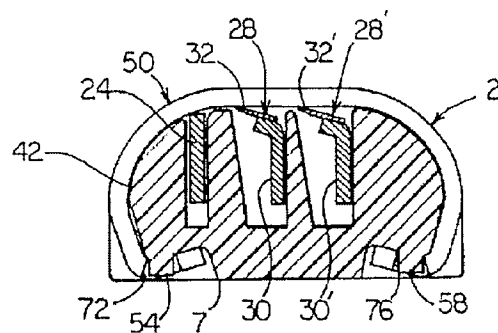


FIG. 5

C. Claims 13, 14, 16-21, 30, 33-43, 85, and 87-91 Are Patentable Over Brown In View Of Rozenkranc and Anderson, and Further In View of Parmley Under 35 U.S.C. § 103(a)

Parmley does not remedy the deficiencies of Brown, Rozenkranc, and Anderson, as discussed above. Nor is Parmley relevant to the patentability of the dependent claims as alleged by the Examiner. Parmley is a general reference book for mechanical components disclosing a number of different clip configurations. The Examiner asserts that it would have been obvious to make the clips asymmetrical "to conform to the new asymmetrical structure." The Examiner,

however, has not even alleged a reason why one having ordinary skill in the art would produce a razor having an asymmetrical structure. Parmley does not suggest the modification of the Brown razor to have an asymmetrical structure. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Accordingly, the rejection is in error.

Independent claim 30 includes all of the limitations of claim 1 discussed above and further requires a clip having a pair of legs each extending through an aperture to retain the one or more shaving blades on the housing. At least one of the legs is required to extend through an opening in the trimming blade assembly. The legs are also required to each have differing curvatures. The rejection of independent claim 30 is improper for at least the reasons given above in regard to independent claim 1. The rejection of dependent claims 33-43, 85, and 87-89 is also improper for at least the reasons given above with regard to independent claim 30.

Regarding claim 39, at page 19 of the Office Action mailed September 4, 2007, the Examiner asserts that "the applicant does not state any benefit for this arrangement [the straight portion of the leg extending through the housing], nor does it solve any stated problem." This statement is incorrect. Appellant discusses the advantages of the leg of the clip extending through the housing at p. 10, lines 5-18 of Appellant's specification, as follows:

Threading clips 32 through the housing and bending legs 50 and 52 can provide several advantages. For example, a wider blade unit 16 can be provided without substantial increase in length of the clips 32, because the clips 32 are positioned inboard of the blade unit's front and rear edges 44, 46. This is in contrast to, e.g., U.S. Pat. No. 6,035,537, which employs metal clips that wrap around the housing's periphery and over front and rear sides of the blade unit. Also, straight portions 54 and 56 of the legs 50 and 52 are relatively enclosed within slots 40 and 42 of the housing 20 and bent over the housing using relatively sharp bends (i.e., bends having a relatively short bend radius). This bend geometry can provide very secure attachment of the clips 32 to the housing 20, making removal of the clips 32 from the slots 40 and 42 difficult without breaking the clip. Additionally, by forming the clips 32 of metal and bending the metal sharply, it can be relatively difficult to straighten the clips sufficiently to pull the bent portions 66, 68 through the slots 40, 42. As another example, an in-board clip arrangement facilitates use of a longer and wider guard, described in greater detail below

Independent claim 90 also requires a similar structure. Notably, independent claim 90 requires two pairs of apertures in the housing between the front and rear edges and a slot in the trimming blade assembly. The apertures are required to extend from a top surface of the housing adjacent the cutting edges of the blades, to a bottom, opposite, surface of the housing. (Similar to the structure claimed in dependent claim 2, which depends from independent claim 1, and is discussed above). The trimming blade assembly, however, includes a slot, instead of an opening, through which a leg of each of a pair of clips extends through. Neither Rozenkranc nor Brown discloses either an opening or a slot in a trimming blade assembly, through which a leg of each of a pair of clips pass through. Furthermore, similar to the rejection of dependent claim 2, the Examiner has also not expressed a reason for why one having ordinary skill in the art would create a passage through the V-shaped groove and through the bottom of the housing. Accordingly, the rejection of independent claim 90 is improper for at least the same reasons as discussed above in regards to claims 1 and 2.

Although, unlike independent claims 1 and 30, independent claim 90 does not include a requirement that “the trimming blade assembly is positioned on the housing, relative to the shaving blades, such that when the trimming blade is in contact with a user’s skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the user’s skin,” claim 90 still requires a trimming blade assembly that is distinct from the cutting surface by reciting that the pair of clips “retain the one or more shaving blades and the trimming blade assembly on the housing.” Accordingly, the rejection of independent claim 90 is improper for the same reasons given above with respect to independent claim 1 and dependent claim 2. The rejection of dependent claim 91 is also improper for at least the reasons given above with regard to independent claim 90.

D. Claims 22-24 Are Patentable Over Brown In View Of Rozenkranc, Anderson, and Parmley, and Further In View of Rozenkranc Under 35 U.S.C. § 103(a)

The Rozenkranc disclosure regarding “an elastomeric member having fins” also does not remedy the deficiencies of Brown, Rozenkranc, Anderson, and Parmley, as discussed above. Accordingly, the rejection of dependent claims 22-24 is also in error for the same reasons discussed above.

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E. Conclusion

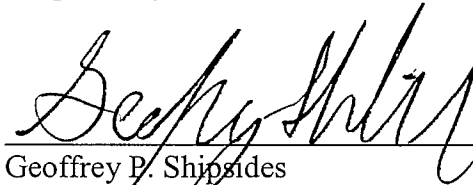
Because the Examiner has misconstrued the disclosure of Brown, asserts an alleged combination that would require a wholesale redesign of the Brown razor, and applies incorrect legal standards in making the outstanding rejections, all of the rejections are in error. Accordingly, Appellants request the reversal of each of these erroneous rejections.

Please apply \$510 for the required fee and any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

12/10/2007



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Appendix of Claims

1. A shaving blade unit comprising:

a housing having a front edge, a rear edge and side edges extending between the front and rear edges, the housing defining an aperture between the front and rear edges;

one or more shaving blades between the front edge and the rear edge, the one or more blades having cutting edges arranged to define a cutting region;

a clip arranged to retain the one or more shaving blades on the housing, the clip having a leg received by the aperture, the leg having a bent portion defining a curvature to secure the clip to the housing; and

a trimming blade assembly, comprising a blade carrier and a trimming blade, retained on the housing by the clip, wherein the leg of the clip extends through an opening defined by the trimming blade assembly securing the trimming blade assembly to the housing relative to the shaving blades, such that when the trimming blade is in contact with a user's skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the user's skin.

2. The shaving blade unit of claim 1, wherein the aperture extends from a top surface of the housing, adjacent the cutting edges of the blades, to a bottom, opposite, surface of the housing.

3. The shaving blade unit of claim 2, wherein the leg extends through the aperture and is bent about at least a portion of the bottom surface of the housing.
4. The shaving blade unit of claim 1, wherein the aperture is between the side edges.
5. The shaving blade unit of claim 1, wherein the leg is bent about at least a portion of a bottom surface of the housing.
6. The shaving blade unit of claim 1, wherein the leg has a relatively straight portion.
7. The shaving blade unit of claim 1, wherein the leg has multiple bent portions.
8. The shaving blade unit of claim 1, wherein the leg is bent to a curvature greater than 90 degrees.
9. The shaving blade unit of claim 1, wherein the clip has multiple legs.
10. The shaving blade unit of claim 9, wherein the housing defines multiple apertures (40, 42) between the front and rear edges and the legs extend through corresponding apertures.

11. The shaving blade unit of claim 9, wherein each of the legs has a bent portion defining a respective curvature.

12. The shaving blade unit of claim 9, wherein each of the legs is bent about at least a portion of a bottom surface of the housing.

13. The shaving blade unit of claim 9, wherein the legs have differing curvatures.

14. The shaving blade unit of claim 13, wherein each of the legs has a curvature of greater than 90 degrees.

15. The shaving blade unit of claim 1, wherein the housing defines multiple apertures (40, 42) between the front and rear edges, and the blade unit comprises multiple clips extending into associated apertures, each clip arranged to retain the one or more blades on the housing and having legs having a bent portion to secure the clip to the housing.

16. The shaving blade unit of claim 15, wherein the legs of a respective clip have differing curvatures.

17. The shaving blade unit of claim 16, wherein the curvatures are greater than 90 degrees.

18. The shaving blade unit of claim 16, wherein the legs are bent about at least a portion of a bottom surface of the housing.

19. The shaving blade unit of claim 16, wherein the clips are located in-board of the front, rear and side edges and spaced from each other.

20. The shaving blade unit of claim 16 comprising a pair of clips wherein one of the pair of clips is located near one of the side edges and the other clip is located near the other of the side edges such that the one or more blades have a blade length (L_b) extending between the clips.

21. The shaving blade unit of claim 20 comprising an elastomeric member affixed to the housing, the elastomeric member having a length (L_e) measured parallel to a blade axis that is greater than the blade length (L_b).

22. The shaving blade unit of claim 21, wherein the elastomeric member comprises a group of fins.

23. The shaving blade unit of claim 22, wherein at least one the fins has a length (L_f) measured parallel to the blade axis that is at least equal to the blade length (L_b).

24. The shaving blade unit of claim 22, wherein the fins have an associated length (L_f) measured parallel to the blade axis, the associated lengths (L_f) increasing from a fin furthest from the one or more blades to the fin nearest the one or more blades.

28. The shaving blade unit of claim 1, wherein the bent portion is formed by crimping.

29. The shaving blade unit of claim 1, wherein the clip comprises aluminum.

30. A shaving blade unit comprising:
a housing having a front edge, a rear edge and side edges extending between the front and rear edges, the housing defining a pair of apertures;

one or more shaving blades between the front edge and the rear edge, the one or more blades having cutting edges arranged to define a cutting region;

a clip having a pair of legs arranged so that each leg extends through one of the apertures to retain the one or more shaving blades on the housing, the clip having legs having differing curvatures; and

a trimming blade assembly, comprising a blade carrier and a trimming blade, retained on the housing, wherein a leg of the clip extends through an opening in the trimming assembly and thereby retains the trimming assembly on the housing, and wherein the trimming blade assembly is positioned on the housing, relative to the shaving blades, such that when the trimming blade is in contact with a user's skin the cutting edges of the one or more shaving blades are disposed on

a surface facing away from a surface contacting the user's skin.

35. The shaving blade unit of claim 30, wherein the apertures are located between the front and rear edges of the housing.

36. The shaving blade unit of claim 35, wherein the apertures are located between the side edges of the housing.

37. The shaving blade unit of claim 30, wherein the curvatures are defined by multiple bent portions.

38. The shaving blade unit of claim 37, wherein the legs include a straight portion.

39. The shaving blade unit of claim 38, wherein the straight portion extends through the housing.

40. The shaving blade unit of claim 30, wherein the curvatures are greater than about 90 degrees.

41. The shaving blade unit of claim 30, wherein the legs extend about at least a portion of a bottom surface of the housing.

42. The shaving blade unit of claim 30, wherein the clip comprises aluminum.

43. The shaving blade unit of claim 30, wherein the curvatures are formed by crimping.

81. The shaving blade unit of claim 1 wherein the housing defines a top surface, said top surface being formed adjacent the cutting edges of the one or more blades, and a bottom surface, opposite said top surface, and the trimming blade defines a second cutting region adjacent the bottom surface of the housing.

82. The shaving blade unit of claim 1 wherein the trimming blade assembly is mounted along the rear edge of the housing.

83. The shaving blade unit of claim 1 wherein the opening through which the leg extends is defined by the blade carrier.

84. The shaving blade unit of claim 1 wherein the trimming blade is positioned outside of the cutting region.

85. The shaving blade unit of claim 33 wherein the opening through which the leg extends is defined by the blade carrier.

86. The shaving blade unit of claim 81 wherein the trimming blade includes a cutting edge that faces away from said top surface.

87. The shaving blade unit of claim 30 wherein the housing defines a top surface, said top surface being formed adjacent the cutting edges of the one or more blades, and a bottom surface, opposite said top surface, and the trimming blade defines a second cutting region adjacent the bottom surface of the housing.

88. The shaving blade unit of claim 30 wherein the trimming blade assembly is mounted along the rear edge of the housing.

89. The shaving blade unit of claim 30 wherein the trimming blade is positioned outside of the cutting region.

90. A shaving blade unit comprising:

a housing having a front edge, a rear edge and side edges extending between the front and rear edges, the housing defining two pairs of apertures between the front and rear edges wherein each of the apertures extends from a top surface of the housing, adjacent the cutting edges of the blades, to a bottom, opposite, surface of the housing;

one or more shaving blades between the front edge and the rear edge, the one or more blades having cutting edges arranged to define a cutting region;

a trimming blade assembly, comprising a blade carrier and a trimming blade, having a slot;

a pair of clips, disposed on opposite sides of the cutting region, each clip having a pair of legs, each leg extending through one of the apertures and one leg of each clip extending through the slot, to retain the one or more shaving blades and the trimming blade assembly on the housing.

91. The shaving blade unit of claim 90, wherein each leg of each clip engages a lower surface of the housing.

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Evidence Appendix

None

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Related Proceedings Appendix

None